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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,736	09/23/2003	Stanley B. Collins	58725US002	1779

32692 7590 01/25/2005

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EXAMINER

MARCHESCHI, MICHAEL A

ART UNIT	PAPER NUMBER
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1755

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/668,736

Applicant(s)

COLLINS ET AL.

Examiner

Michael A Marcheschi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/10/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 5-7 and 11-18 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hoopman et al. (248) for the same reasons set forth in the previous office action which are incorporated herein by reference.

Claims 1, 5-7 and 11-18 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hoopman et al. (217) for the same reasons set forth in the previous office action which are incorporated herein by reference.

Claims 2-4, 8-10 and 19-21 are rejected under 35 U.S.C. 103(a) as obvious over Hoopman et al. (248) for the same reasons set forth in the previous office action which are incorporated herein by reference.

Claims 2-4, 8-10 and 19-21 are rejected under 35 U.S.C. 103(a) as obvious over Hoopman et al. (217) for the same reasons set forth in the previous office action which are incorporated herein by reference.

Claims 1-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 and 22-34 of copending Application No. 10/668,753 for the same reasons set forth in the previous office action which are incorporated herein by reference.

Applicant's arguments filed 10/25/04 have been fully considered but they are not persuasive.

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Applicants argue that neither of the Hoopman et al. reference teach or suggest the subject matter of claim 1 (linear relationship). A mere statement of this is not sufficient to establish patentability. Applicants provide no evidence that clearly shows applicants position. In addition, the examiner is unclear as to this statement because it is explicitly stated on page 20, lines 1-2 that the geometry of the composite can be pyramidal (i.e. which is the same geometry as Hoppman et al. (248), as defined in column 14, line 62+ and that of Hoopman et al. as defined in column, lines 45-48). Since applicants own specification on page 20 teaches that the shape of the inventive feature is pyramidal, this apparently implies that this shape exhibits a linear relationship. Applicants arguments are apparently ignoring and contradictory to the teaching in applicants own specification. In summary and assuming *arguendo* about the specification teachings, applicant have not provide any clear evidence to support the argument that the reference shapes do not have a linear relationship. In other words, a mere statement that the reference features do not have a linear relationship, without any evidence to substantiate this, is insufficient to establish patentability. Applicants also apparently argue figure 1B of the instant application as providing a distinction over the references. It is the examiners position that this figure shows only one feature shape that exhibits the claimed relationship and since the broad interpretation of the claims is not limited to features having the shape defined in this figure (i.e. other shapes can exhibit the claimed relationship absent clear evidence), the examiner is unclear as to how an argument based on **only one** specific shape can be used to establish patentability when the broad interpretation of the claims encompasses other shapes and are not limited to the specific shape argued. With respect to the limitations of claim 19, applicants arguments in the forth paragraph of page 6 are apparently concerned with Hoopman et al. (217) and not Hoppman

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(248), as defined. The examiner will therefore comment on Hoopman (217) because figure 3, as argued, is a composite shape (figure 3 of the other reference does not show a composite shape). Applicants argue the claimed feature has four **distinct and separate** sidewalls, as defined by the specification, and the reference feature does not. Applicant claim does **not** define that the sidewalls are separate and distinct and one cannot argue limitations not in the claim. Looking at figure 3 of the reference, the shape has 4 sides (i.e. encompasses four sidewalls). Although these sides are continuous and not separate or distinct, applicants claim does not distinguish over this (instant claim does not define separate and distinct sidewalls). In other words, although the sides are continuous and the vertex of these shaped composites are not defined by a single point, as is clearly depicted in by the figures of the instant invention, the claims do not clearly define these aspects of the figure (i.e. sidewalls form a polyhedron and the vertex is a single point).

Assuming any further arguendo, this reference clearly implies in column 6, lines 40+ that the shape can have four separate and distinct sidewalls (i.e. shapes defined by the reference can clearly have this feature). In addition, this reference clearly teaches that the composites can be any shape and this broadly makes obvious the claimed parabolic shapes (i.e. arcuately shaped sections) absent evidence to the contrary. Applicants have not argued claim 19 as rejected over the other Hoopman et al. reference

In view of the teachings as set forth above, it is still the examiners position that the references reasonably teach or suggest the limitations of the rejected claims.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

"A reference is good not only for what it teaches but also for what one of ordinary skill might reasonably infer from the teachings. *In re Opprecht* 12 USPQ 2d 1235, 1236 (CAFC 1989); *In re Bode* USPQ 12; *In re Lamberti* 192 USPQ 278; *In re Bozek* 163 USPQ 545, 549 (CCPA 1969); *In re Van Mater* 144 USPQ 421; *In re Jacoby* 135 USPQ 317; *In re LeGrice* 133 USPQ 365; *In re Preda* 159 USPQ 342 (CCPA 1968)". In addition, "A reference can be used for all it realistically teaches and is not limited to the disclosure in its preferred embodiments" See *In re Van Marter*, 144 USPQ 421.

"A generic disclosure renders a claimed species prima facie obvious. *Ex parte George* 21 USPQ 2d 1057, 1060 (BPAI 1991); *In re Woodruff* 16 USPQ 2d 1934; *Merk & Co. v. Biocraft Lab. Inc.* 10 USPQ 2d 1843 (Fed. Cir. 1983); *In re Susi* 169 USPQ 423 (CCPA 1971)".

Evidence of unexpected results must be clear and convincing. *In re Lohr* 137 USPQ 548. Evidence of unexpected results must be commensurate in scope with the subject matter claimed. *In re Linder* 173 USPQ 356.

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The IDS filed 5/10/04 has been considered, a copy of which is attached. The IDS filed 10/25/04 is a copy of the above mentioned IDS. Although the IDS was filed prior to the first office action, it apparently was not scanned in until after the office action was completed and therefore was not considered at that time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael A Marcheschi whose telephone number is (571) 272-1374. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark L Bell can be reached on (571) 272-1362. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

1/21/05
MM

Michael A Marcheschi
Primary Examiner
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